No. 16083.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MARIA DE LA LUX VIRTUETTE TORRES,

Appellant,

vs.

RICHARD C. HOY, Acting Director, Immigration and Naturalization Service, Los Angeles, California,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Statement of Jurisdiction.

Appellant, plaintiff below, brought an action in the United States District Court for the Southern District of California, Central Division, seeking judicial review of the administrative deportation hearings culminating in an order that she be deported [R. 3-5].[1] Jurisdiction there was invoked pursuant to 28 U. S. C. 2201 and 5 U. S. C. 1009.

The Judgment of the District Court [R. 15-16], entered in favor of appellee, was a final decision; hence, the jurisdiction of this Court would be found in 28 U. S. C. Secs. 1291 and 1294(1).

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[1] "R." refers to the printed Transcript of Record.

Statement of the Case.

On September 19, 1949, appellant, an alien, was convicted, under the name of Manuela Aguirre Ramirez, in the United States District Court for violation of 8 U. S. C. 144 (1940 Ed.), *i.e.,* smuggling aliens. Following a suspended sentence, she was allowed to voluntarily depart the United States to Mexico October 9, 1959.

Following the deportation hearing of December 26, 1956, the Hearing Officer found as a fact that appellant had resided almost continuously in the United States from the years 1943 through 1950. Moreover, prior to November 1, 1950, she had sought entry into the United States but had been excluded therefrom.

On November 1, 1950, appellant, at Tijuana, Mexico, applied for an immigration visa to the United States. In this application appellant stated, among other things: (1) that she was not a person "previously deported, or ordered deported and permitted to leave the United States voluntarily under the order of deportation"; (2) that she had not "been arrested or indicted for or convicted of any offense"; (3) that she was not a person "previously excluded from the United States at a port of entry"; and (4) that she had resided at the following places since the age of 14 years: Tala, Jalisco, Mexico, 1932-1946; Tijuana, Mexico, 1946-1950.

Appellant obtained her visa on November 1, 1950, and since November 2, 1950, has resided in this country. Subsequently, on December 26, 1956, appellant was present, with counsel, at a deportation hearing. Following the hearing, the Special Inquiry Officer found that the above statements in appellant's visa application were false and, further, found her deportable under the provisions of 8 U. S. C. 1251(a)(1) (*i.e.,* an alien who obtained a visa

by willfully misrepresenting material facts, contrary to 8 U. S. C. 1182(a), and therefore excludable at entry). The resulting order of deportation was affirmed by the Board of Immigration Appeals on September 6, 1957, and appellant thereafter sought relief in the District Court. The District Court found from the administrative record before it that the order of deportation was justified.

Questions Presented.

Appellee can only guess what questions appellant intended to present to this Honorable Court for review, and therefore perhaps erroneously concludes that the following questions only are presented: (1) that the District Court's finding that the order of deportation is based on reasonable, substantial and probative evidence is incorrect; and (2) that the District Court's finding that appellant's false statements were material is incorrect.

Appellee for its part raises these questions on this appeal: (1) whether or not the instant appeal should be dismissed for failure to observe this Honorable Court's rules; and (2) whether or not the instant appeal should be dismissed as frivolous and vexatious.

Statutes Involved.

Section 241(a)(1) of the Immigration and Nationality Act of 1952 [8 U. S. C. 1251(a)(1)] provides as follows:

> "(a) Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who—
>
> (1) At the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;"

Section 212(a)(19) of the Immigration and Nationality Act [8 U. S. C. 1182(a)(19)] provides as follows:

> "(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:
>
> (19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact; . . ."

Rule 18 of this Honorable Court states, insofar as pertinent, as follows:

> "1. Counsel for the *appellant* shall file with the clerk of this court . . . a printed brief . . .
>
> 2. This brief shall contain, in order here stated—
>
> (c) A concise abstract or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.
>
> (d) In all cases a specification of errors relied upon which shall be numbered and shall set out separately and particularly *each* error intended to be urged. . . . In all cases when findings are specified as error, the specification shall state *as particularly as may be wherein the findings of fact and conclusions of law are alleged to be erroneous.* . . .
>
> (e) A *concise* argument of the case (preferably preceded by a summary), exhibiting a *clear statement of the points of law or facts to be discussed,* with a reference to the pages of record and the authorities relied upon in support of each point. . . ." [Emphasis added.]

ARGUMENT.

I.

Inasmuch as Appellant's Brief Fails to Conform to the Rules of This Honorable Court, the Appeal Should Be Dismissed as Frivolous and Vexatious.

Appellant has specified for review here seven alleged errors of the court below (App. Br. 4-5). These specifications pertain to certain of the lower court's findings of fact and conclusions of law [R. 12-15]. However, in blithe disregard of this Court's Rule 18(2)(d), none of appellant's specifications ". . . state as particularly as may be wherein the findings of fact and conclusions of law are alleged to be erroneous." What appellant's specifications (to say nothing of her argument) amount to is a mere grumble with the suit's outcome below and, not being satisfied with that result, appellant does not ask this Court to review any errors of law below, but merely to scan the entire record for error. This is not the function of this Court and hence appellant's specifications should be disregarded. *Cf. Bellows v. Porter,* 201 F. 2d 429, 433 (C. A. 8, 1953).

Appellee would not object if appellant's brief were merely sloppy or obscure, but appellee does object because it is unfair. Since appellant violated Rule 18(2)(c) of this Honorable Court by failing to state ". . . succinctly the questions involved and the manner in which they are raised," appellee does not know what question or questions it should brief in reply. Relief from this handicap cannot be realized from appellant's "Argument" (App. Br. 6-12). Appellant's "Argument," in total defiance of this Court's Rule 18(2)(e), is not concise, does not make a clear statement of the points or facts sought to be discussed, does not refer to the pages of the record relied

upon in support of each record, and is not preceded by a summary.

In short, appellant's brief has all the clarity of a man mumbling to himself. Hence, since appellant failed to state the questions presented for review here, and since ascertainment of the issues is unduly difficult, if not impossible, from appellant's disordered argument, appellee in desperation resorted to appellant's "Specification of Errors" for enlightenment.

However, Specification I is unintelligible; Specifications II and IV do not specify the alleged errors with particularity or refer to appropriate pages in the record where the errors may be found. Rule 18(2)(b); *Cly v. United States,* 201 F. 2d 806, 808-9 (C. A. 9, 1953), cert. den. 345 U. S. 976. Specification V has been abandoned and therefore need not be considered by this Honorable Court. *Western Natl. Ins. Co. v. LeClare,* 163 F. 2d 337 (C. C. A. 9, 1947). Specifications VI and VII specify nothing and present nothing for review. *United States v. Cushman,* 136 F. 2d 815, 817 (C. C. A. 9, 1943). Specification III improperly alleges more than one error and need not be considered. *Thys Co. v. Anglo-Calif. Natl. Bk.,* 219 F. 2d 131, 132 (C. A. 9, 1955).

Perhaps the outstanding vice of appellant's brief is that it serves no purpose. As was so aptly said in *Thys Co. v. Anglo-Calif. Natl. Bk., op. cit.,* at page 133,

> "The purpose of the requirements in respect of briefs is to conserve the time and energy of the court and clearly to advise the opposite party of the points he is obliged to meet. These purposes were not served here."

Where there has been a flagrant disregard of this Court's rules, a motion to dismiss the appeal is appropriate.

Thys Co. v. Anglo-Calif. Natl. Bk., op. cit., at p. 133; *Anderson v. United States,* 218 F. 2d 780 (C. A. 9, 1955); *Hargraves v. Bowden,* 217 F. 2d 839, 840 (C. A. 9, 1954).

It is submitted that appellant's heedless disregard of this Court's rules, coupled with her failure to raise any meritorious issue on this appeal, constitutes sufficient basis for this Court to conclude that this appeal was taken primarily for delay and to therefore dismiss it as frivolous and vexatious. *Cakmar v. Hoy,* ..... F. 2d ..... (C. A. 9, No. 16153, decided March 23, 1959).

II.

The District Court Correctly Decided the Case Below.

A. The District Court Correctly Found That There Was Reasonable, Substantial and Probative Evidence Justifying the Order of Deportation.

The court below found that the Special Inquiry Officer correctly decided that there was reasonable, substantial and probative evidence that appellant had willfully and fraudulently failed to disclose her prior conviction on her visa application. Among the evidence demonstrating the soundness of this holding are the following statements of appellant to an Immigration and Naturalization Service representative on September 6, 1956:

> "Q. This application for an immigration visa and alien registration contains the statement, among others, that 'I have (not) been arrested, indicted for, or convicted of any offense . . .'; were you asked such a question when you applied for your immigration visa? A. Yes.
>
> Q. How did you answer? A. I said 'No.'
>
> Q. Then, as I understand it, you answered that question falsely. Is that correct? A. It is correct that I answered falsely.

Q. Why did you answer falsely? A. Because I thought they would not give me the immigration and I had need for it for the necessities of life." [Page 6 of appellant's sworn statement of September 6, 1956, introduced as Exhibit 7 (p. 11) in appellant's deportation hearing of December 26, 1956.]

Similar evidence that appellant deliberately concealed her almost continuous residence in the United States from 1943 to the time she executed her visa application on November 1, 1950, is indicated in the Administrative Record at the September 6, 1956 interview, at page 6:

"Q. In the application for an immigration visa made by you on November 1, 1950, at San Ysidro, California, the statement is made that 'Since reaching the age of 14 years, I have resided at the following places during the periods stated, to wit: Tala, Jalisco, Mexico, 1932-1946; Tijuana, Mexico, 1946-1950.' Is that a correct statement? A. I gave that answer. It is not the truth.

Q. Why did you give that answer? A. Because I didn't want to tell them that I had in years past been in the United States.

Q. Why did you not want them to know you were in the United States? A. I didn't think they would give me my visa because they would have wanted to know about my permit to be here, what I have been doing, and would find out about Manuela Aguirre."

It is submitted that the above evidence available to the Immigration authorities is not conjectural, not a scintilla, but is reasonable, substantial and probative evidence that appellant deliberately lied on her visa application.

As the court below so rightly said, "A study of the entire administrative record convinces me that there is sub-

stantial evidence in the record to sustain the ground upon which deportation was based. Indeed, her own admissions at the hearing, where she was represented by counsel, would alone be sufficient to show wilful fraud and misrepresentation." [R. 9.]

B. Appellant's False Statements in the Visa Application Were Material.

Appellant apparently asks that this Court substitute its judgment for the court below and rule that appellant's false statements would have, even if the truth had been known, not precluded her from admission to the United States. (App. Br. 7-11). But in the instant case appellant's concealment of her prior conviction and her residence were clearly material. Such misrepresentations, as she knew, would forestall or obstruct an investigation into various channels regarding her admissibility. The Government of course was prejudiced or damaged by these false statements because it was deprived of the complete investigation contemplated in such cases by 8 U. S. C. 1202(b). In *United States ex rel. Jankowski v. Shaughnessy,* 186 F. 2d 580 (C. A. 2, 1951), where the concealment of a prior conviction in a visa application was considered, it was held, at page 582, that:

> "The misrepresentation and concealment were material. Had he disclosed those facts, they would be enough to justify the refusal of a visa. For surely they would have led to a temporary refusal, pending a further inquiry, the results of which might well have prompted a final refusal."

And as was said in a recent case involving concealment of true name in visa application:

> "Likewise, in the case at bar the appellee's misrepresentations were made to gain the advantage of acquiring a visa without an appropriate police investigation of most of her adult life as provided by 8 U. S. C. A. 1202(b). That she might have obtained a visa on the true facts does not vitiate the fraud."
>
> *Landon v. Clarke,* 239 F. 2d 631, 634.

And see *Ablett v. Brownell,* 240 F. 2d 625, 631 (C. A. D. C. 1957) (fact alien concealed prior conviction in visa application held material regardless of whether or not crime involved "moral turpitude").

Hence, it is submitted that appellant's contention that her false statements were immaterial (*i.e.,* even if she had disclosed all on her application, she would have received a visa forthwith) is totally without merit.

Conclusion.

In conclusion, appellee respectfully submits to this Honorable Court:

(1) That the instant appeal should be dismissed because of appellant's flagrant violations of this Court's rules.

(2) That the instant appeal should be dismissed as frivolous and vexatious.

But in any event:

(a) That the order of deportation was based upon reasonable, substantial and probative evidence; and

(b) That appellant's willful and fraudulent misrepresentations in her visa application were material, and hence

for all or any of these reasons the judgment appealed from below should be affirmed.

Respectfully submitted,

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